

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

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RECORDATION #10 FILED 1425

December 12, 1991

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INTERSTATE COMMERCE COMMISSION

*New Member*

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provision of 49 U.S.C. Section 11303(a) are two (2) fully executed and acknowledged copies of a Railroad Locomotive Lease Agreement dated September 5, 1991, a primary document as defined the the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Lessor: IC Leasing Corporation I  
1077 East Sahara Avenue  
Las Vegas, Nevada 89193

Lessee: Illinois Central Railroad Company  
233 North Michigan Avenue  
Chicago, Illinois 60601

A description of the railroad equipment covered by the enclosed document is forty-four (44) EMD SD40-2 locomotives identified by BN 6708 - 6713 and BN 6715 - 6752, each both inclusive (before repair) and IC 6100 - 6143 (after repair).

Also enclosed is a check in the amount of \$16 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

DEC 12 1 12 PM '91  
MOTOR OPERATING UNIT

*CT Kappler*  
*C. Overly*

Mr. Sidney L. Strickland, Jr.  
December 12, 1991  
Page Two

A short summary of the enclosed primary document to appear in the Commission's Index is:

Railroad Locomotive Lease Agreement dated September 5, 1991 between IC Leasing Corporation I, Lessor, and Illinois Central Railroad Company, Lessee covering 44 locomotives identified by original BN marks and numbers and current IC marks and numbers.

Very truly yours,

  
Charles T. Kappler

CTK/bg  
Enclosures

17625  
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INTERSTATE COMMERCE COMMISSION

**RAILROAD LOCOMOTIVE LEASE AGREEMENT**

**RAILROAD LOCOMOTIVE LEASE AGREEMENT** ("Agreement") dated as of September 5, 1991, between IC LEASING CORPORATION I, 1077 East Sahara Avenue, Las Vegas, Nevada 89193, a Nevada corporation ("ICL"), as lessor, and ILLINOIS CENTRAL RAILROAD COMPANY, 233 N. Michigan Avenue, Chicago, Illinois 60601, a Delaware corporation ("Lessee"), as lessee.

**1. DELIVERY AND ACCEPTANCE OF UNITS.**

A. ICL agrees to lease to Lessee, and Lessee agrees to lease from ICL, those certain railroad locomotives described in the lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein means any such lease schedule executed concurrently herewith and any additional lease schedules hereafter executed and all amendments thereto, and the term "Schedules" means all thereof. Each Schedule shall incorporate therein all of the terms and conditions of this Agreement to the same extent as if the provisions hereof were set forth in full therein. Each Schedule shall set forth a description of the Units covered thereby, including such facts as the number of Units of each type, road numbers, rental charges, term throughout which the Unit or Units shall remain in Lessee's service, the delivery location (the "Delivery Point"), the rental rate for each Unit, the Lease Term and such other information as may be desired by both parties, including any variation from the terms of this Agreement. In the event of any conflict between this Agreement and any Schedule, the Schedule shall control with respect to the Units subject to such Schedule. The locomotives listed on the Schedules are hereinafter individually referred to as a "Unit" and collectively referred to as the "Units;" the Units listed on any particular Schedule are hereinafter referred to as a "Group of Units."

B. ICL will, at its own expense, deliver the Units to Lessee at the Delivery Point, and within the time period, specified in the Schedule with respect thereto in a condition suitable for immediate use by Lessee. Upon completion of delivery of one or more Units to be delivered as of a specified date to the Delivery Point, Lessee will have a right to inspect each Unit and Lessee will accept all such Units so delivered on the first day (the "Acceptance Date") when all such Units have been so delivered and are in the condition required by the Schedule. Upon delivery of the Units to, and acceptance thereof by Lessee, ICL shall lease to Lessee and Lessee shall lease such Units for the rental and on and subject to the terms and conditions herein set forth. Upon delivery and acceptance of one or more Units, ICL and Lessee shall execute a certificate in the form of Exhibit A hereto indicating the Acceptance Date as to such Units. Lessee retains the right to reject any Unit not conforming to the foregoing requirements and shall notify ICL of Lessee's rejection of the Unit and the specific reason therefor. Lessee agrees that it will not place any Unit in service prior to the date on which such Unit shall have been delivered to and accepted by Lessee.

**2. COMPENSATION.**

A. Lessee agrees to pay ICL the rent in the amounts and on the dates specified in the Schedule for each Unit. The first payment for any Unit shall be a prorated amount for the period from the Acceptance Date with respect to such Unit to the end of the payment period for the applicable Lease Term in which the Acceptance Date occurs. If any of the rent payment dates falls

on a Saturday, Sunday or legal holiday, the rent shall be due on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois or Las Vegas, Nevada are authorized or obligated to remain closed. All payments to be made to Lessor hereunder shall be made at such place within the United States of America as Lessor shall specify in writing, but in the absence of such specification, shall be made to Lessor at 1077 East Sahara Avenue, Las Vegas, Nevada 89193. In the event ICL notifies Lessee in writing that the right to receive rents has been assigned in accordance with Section 13 hereof, Lessee shall make payment in the manner designated in such notice or as otherwise designated in writing by such assignee.

B. Lessee will, on demand, pay to ICL interest at the lower of 18% per annum or the maximum rate permitted by applicable law on any payment of rent not paid within 5 days of the due date for any period during which such rent is overdue.

C. This Agreement is a net lease and Lessee's obligation to pay rent and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, except as herein specifically provided, Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any existing or future claims of Lessee against ICL under this Agreement or otherwise; nor, except as otherwise expressly provided herein, shall this lease terminate, or the respective obligations of ICL or Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Units from whatsoever cause or Lessee's inability to use the Units as a result of condemnation, it being the intention of the parties that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 7 or 18 hereof, or, until pursuant to Section 18 hereof, the Units have been returned to the possession of ICL.

3. **TERM.** The term of this Agreement with respect to each Unit shall commence on the Acceptance Date with respect to such Unit and shall continue, unless otherwise terminated by any other provision hereof, for the period specified under the Lease Term in the applicable Schedule following the last day of the month in which the Acceptance Date occurs.

4. **DISCLAIMER.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ICL NEITHER MAKES, NOR SHALL BE DEEMED TO HAVE MADE, AND LESSEE HEREBY EXPRESSLY WAIVES ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE UNITS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO THE DESIGN, QUALITY OR CONDITION OF THE UNITS OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO ANY OTHER MATTER RELATING TO THE UNITS OR ANY PART THEREOF. LESSEE CONFIRMS THAT IT HAS SELECTED THE UNITS ON THE BASIS OF ITS OWN JUDGEMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES MADE BY ICL, AND LESSEE ACKNOWLEDGES THAT ICL IS NOT A MANUFACTURER OR VENDOR OF ANY OF THE UNITS. ICL NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE ACCOUNTING TREATMENT TO BE ACCORDED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT [OR, EXCEPT AS PROVIDED IN SECTION 13 HEREOF, AS TO ANY TAX CONSEQUENCES AND/OR TAX TREATMENT THEREOF].

## **5. REPRESENTATIONS AND WARRANTIES.**

A. Lessee represents and warrants that (a) Lessee is a duly organized, validly existing corporation in good standing under the laws of the state of its incorporation and is duly qualified to do business in all jurisdictions in which qualification is required in order for it to carry out the transactions contemplated by this Agreement; (b) Lessee has full corporate power, authority and legal right to execute, deliver and perform this Agreement, and the execution, delivery and performance hereof has been duly authorized by all necessary corporate action of Lessee; and (c) there is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against Lessee which involves the Units or the transactions contemplated by this Agreement.

B. Lessor represents and warrants that (a) Lessor is a duly organized, validly existing corporation in good standing under the laws of the state of its incorporation and is duly qualified to do business in all jurisdictions in which qualification is required in order for it to carry out the transactions contemplated by this Agreement; (b) Lessor has full corporate power, authority and legal right to execute, deliver and perform this Agreement, and the execution, delivery and performance hereof has been duly authorized by all necessary corporate action of Lessor; and (c) there is no action, suit, investigation or proceeding by or before any court, arbitrator, administrative agency or other governmental authority pending or threatened against Lessor which involves the Units or the transactions contemplated by this Agreement.

## **6. USE AND MAINTENANCE; RECORD KEEPING.**

A. So long as the Units shall be leased hereunder and until the Units are returned to ICL in accordance with the provisions of Sections 16 or 18 hereof, Lessee shall, at its own cost and expense, maintain and keep the Units in good order, condition and repair, ordinary wear and tear excepted, utilizing the same standards and care as it does with all similar equipment it owns or leases. Lessee shall not modify any Unit in any material respect without the prior written approval of ICL, which shall not be unreasonably withheld. Any parts installed or replacements made by Lessee upon any Unit pursuant to its obligation to maintain and keep the Units in good order, condition and repair under this Section shall be considered accessions to such Units and title thereto shall be immediately vested in ICL without cost or expense to ICL.

B. Lessee shall perform all record keeping functions related to the registration, use, and maintenance of the Units in accordance with all applicable laws and regulations. At the reasonable request of ICL, Lessee shall provide ICL with access on Lessee's premises (in the same manner and subject to the same conditions as apply to ICL's inspection rights under Section 8) to such information and such other information relating to the Units as is regularly maintained by Lessee. Lessee shall not be responsible to maintain records for longer than its customary retention period with respect thereto.

## **7. CASUALTY OCCURRENCE.**

A. Lessee agrees to notify ICL within 30 days of it having determined that any Unit has become worn out, lost, stolen, destroyed or, in the opinion of Lessee, irreparably damaged (including, without limitation, a determination by Lessee that the repair cost for a Unit exceeds its Casualty Value), from any cause whatsoever (any such occurrence or determination being

hereinafter called a "Casualty Occurrence"). On the next succeeding rental payment date following the date of such notice, Lessee will pay to ICL the rental payment for such Unit due on such date (together with any other unpaid rentals for such Unit) plus a sum equal to the Casualty Value for such Unit as of such rental payment date. The term "Casualty Value" as used herein for any Unit shall mean, at any time, the amount set forth for such time on the Schedule for each Unit.

B. Upon (and not until) payment of all sums required to be paid pursuant to Section 7.A hereof in respect of any Unit, the obligation to pay rent for such Unit accruing subsequent to the payment date shall terminate.

C. ICL appoints Lessee as its agent to dispose of any Unit suffering a Casualty Occurrence at the best price obtainable on an "as is, where is" basis. If Lessee shall have previously paid the Casualty Value of such Unit to ICL pursuant hereto, Lessee shall be entitled to the proceeds of such sale, including without limitation proceeds paid by a railroad as settlement for destruction of such Unit, to the extent such proceeds do not exceed the then Casualty Value of such Unit. Lessee shall be entitled to proceeds that are paid to Lessee by insurance companies as a result of a Casualty Occurrence to the extent such proceeds do not exceed the then Casualty Value of each Unit. Lessor shall receive and Lessee shall pay to Lessor any proceeds that are paid by insurance companies as a result of a Casualty Occurrence to the extent such proceeds exceed the then Casualty Value of each Unit.

8. **INSPECTION.** ICL shall, at its sole cost and expense, at any reasonable time during normal business hours and without interfering with Lessee's operations, have the right to enter the premises of Lessee for the purpose of inspecting the Units to ensure Lessee's compliance with its obligations hereunder. ICL shall enter and occupy Lessee's property at its sole risk and shall be subject at all times to Lessee's operating and safety requirements. Any injury, death or property damage arising out of such entry, occupancy and inspection shall be the entire responsibility of ICL and ICL will indemnify and hold harmless Lessee from any and all such liabilities. ICL will obtain permission from a local Lessee operations officer 48 hours before entry and such permission shall be granted subject to the above. As a condition to any such entry, Lessee may require that ICL or its agent execute a release of liabilities in favor of Lessee in form and substance satisfactory to Lessee. In addition, ICL shall have the right by its agents to inspect Lessee's records with respect to the Units at such reasonable times as ICL may request during the continuance of this Lease.

9. **PROHIBITION OF LIENS; MARKING OF UNITS.**

A. Lessee, at its own expense, will promptly pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under Lessee or its successors or assigns which, if unpaid, might become a lien upon any Unit, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the title, property or rights of ICL created or purported to be created hereunder; provided, however, that this covenant will not be breached by reason of the existence of liens for taxes, assessments or governmental charges or levies, in each case so long as not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

B. Lessee shall, at its own expense, mark the Units as soon as possible after delivery with the marks and numbers designated in the Schedule. Lessee shall not remove the existing words on the side of each Unit, or if so removed it will replace, the words "LEASED FROM IC LEASING CORPORATION I AND SUBJECT TO A SECURITY INTEREST RECORDED WITH THE INTERSTATE COMMERCE COMMISSION." Lessee shall not perform any other remarking or renumbering of the Units except with the express written consent of ICL.

10. **TAXES.** Lessee will be responsible for the filing of all tax returns and will pay all taxes, assessments and other governmental charges levied upon or in respect of the Units, this Agreement or the use of the Units under this Agreement, including, but not limited to, any ad valorem or property taxes, levies, tariffs, all license or registration fees, assessments, fines, penalties and interest and any sales, use or similar taxes payable with respect to the Units, this Agreement or the use of the Units under this Agreement and all payments to be made by Lessee hereunder will be free of any expense to ICL as to any of the foregoing. Notwithstanding the foregoing or the provisions of Section 13 hereof, Lessee shall not be responsible for or pay any income taxes, franchise taxes, privilege taxes, value added taxes, gross receipts taxes or any similar taxes which are measured by reference to ICL's income, capital, net worth, retained earnings or investments or any fines, penalties or interest thereon and shall not be responsible for the filing of any tax returns relative to any such taxes.

Lessee will be under no obligation to pay any taxes or other charges referred to in the preceding paragraph for which it is responsible hereunder so long as Lessee in good faith and by appropriate legal or administrative proceedings is contesting the validity or amount thereof and the nonpayment thereof does not, in ICL's reasonable judgment, materially adversely affect the title, property or rights of ICL, or the security interest of any assignee, in or to any Unit. Such contest will be brought in the name of Lessee, if permissible; if not permissible, ICL, at Lessee's sole cost and expense, will bring the contest in ICL's own name. ICL will reasonably cooperate with Lessee and take any actions reasonably required to permit and prosecute such a contest. Lessee and ICL shall each reasonably cooperate with the other in providing necessary tax information to the other party relating to the Units and the use thereof.

11. **INSURANCE.** Lessee will, at all times prior to the return of the Units to ICL, at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units and (ii) public liability insurance with respect to third party personal injury and property damage, against such risks and in such amounts as is consistent with prudent industry practice, but in any event, against such risks and in such amounts customarily insured against by Lessee in respect to similar equipment owned or leased by it. Such policies of insurance shall name ICL as an additional insured party thereunder with respect to the Units. Lessee will provide to ICL, upon request, a statement of the insurance maintained pursuant to this Section and its self-insurance policies.

12. **INDEMNITIES.** Lessee agrees to indemnify and hold ICL harmless from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (whether as a result of damage to the Units or injury to third parties or their property), regardless of the cause thereof, and any expense in connection therewith (including legal fees), arising out of the use or operation of the Units during the term of this Agreement unless such claim for loss or damage was caused by ICL's negligence, bad faith or wilful misconduct. The indemnities contained in this Section 12 shall survive the expiration or termination of this Lease and return of the Units with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination.

### 13. SPECIAL TAX INDEMNITIES.

A. ICL has calculated the rent hereunder based in part on the assumption that it will be entitled to depreciation deductions ("Depreciation Deductions") under Section 168(a) of the Internal Revenue Code of 1986 as it may be amended hereafter (the "Code") for each Unit in an amount determined by using the method described in Section 168(b) (1) of the Code; an applicable recovery period of seven (7) years; and the half-year convention described in Section 168(d)(1) of the Code.

B. Lessee represents and warrants that:

(i) No Unit will be "limited use property" within the meaning of Internal Revenue Service Procedure 76-30;

(ii) Lessee has not taken and will not claim any Depreciation Deductions in respect of the Units in connection with the filing of its Federal, state or local income tax returns;

(iii) The Units will not be used predominantly outside the United States within the meaning of Section 168 (g)(1)(A) of the Code and in no event more than 90 days in any calendar year during the Lease Term; and

(iv) At all times during the Lease Term, none of the Units will constitute "public utility property" within the meaning of Section 167(1)(3)(A) of the Code.

C. If as a result of any act (other than acts required under this Agreement) or failure to act by Lessee, any sublessee, or any user or person in possession of any Unit, or as a result of any breach, inaccuracy or incorrectness of any representation, warranty, covenant or agreement of Lessee hereunder, ICL shall lose, shall not have or shall lose the right to claim or shall not have substantial authority (within the meaning of Section 6662 of the Code and the regulations promulgated thereunder) for claiming, or there shall be disallowed, recalculated or recaptured all or any portion of the Depreciation Deductions (herein each of such events shall be referred to as an "Indemnity Event"), then in connection with each such occasion, Lessee agrees to pay from time to time upon demand an amount which (after deduction of all taxes, if any, required to be paid by ICL in respect of the receipt of said indemnity amount under the laws of any Federal, state or local government or taxing authority) shall be equal to the sum of the amount of net additional income taxes paid or payable by ICL in consequence of the occurrence of an Indemnity Event plus any interest or penalty which is assessed in connection with the foregoing (taking into account the deductibility of state and local taxes and interest for federal income tax purposes).

D. Lessee shall not be required to pay the amount specified in Section 13.C if the Indemnity Event shall result solely because of the occurrence of any of the following events:

(i) Lessee is required by the terms hereof to pay and shall have paid the loss amount pursuant to Section 7.A hereof;

(ii) There is a transfer or other disposition by ICL of any interest in this Agreement or the Units for Federal income tax purposes;



(iii) There is an amendment to, or change in the Code, any Treasury Regulation promulgated thereunder, any published Revenue Ruling or other document of the United States Treasury or Internal Revenue Service, any applicable state or local statutes, regulations, or similar documents, including without limitation, the rate of tax under the laws of the United States or any state or locality therein on the taxable income of ICL, which is effective on or after the effective date of this Agreement; or

(iv) ICL fails to claim in a timely and proper manner the Depreciation Deductions or fails to have sufficient gross income within the meaning of Section 61(a) of the Code to benefit from the Depreciation Deductions (after taking into account carry backs and carry overs allowable by law).

#### **14. ASSIGNMENT; SUBLEASE; SUBORDINATION.**

A. So long as Lessee shall not be in default under this Agreement, Lessee may sublease the Units to others, provided, however, that the rights of any such sublessee shall be subject and subordinate to, and any such sublease shall be made expressly subject and subordinate to, all of the terms of this Agreement. In addition, before Lessee enters into any such sublease, Lessee must obtain ICL's prior approval. ICL agrees that such approval shall not be unreasonably withheld and that such determination shall be given within 5 business days from the date of such request. Lessee may make subleases of less than 6 months duration without ICL's consent. No sublease of any Unit shall in any way discharge or diminish any of Lessee's obligations to ICL hereunder, including, but not limited to, the payments due to ICL on the first day of each month pursuant to Section 2 of this Agreement.

B. This Agreement and the Schedules shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. It is understood and agreed that ICL or any Lease Assignee may assign this Agreement with respect to the Units and the Schedule with respect thereto to any security trustee or secured party (each herein a "Lease Assignee"). Upon delivery of a notice of assignment to Lessee, ICL as used herein with respect to such Schedule and Units shall mean such Lease Assignee. Lessee shall consent to and acknowledge in writing, upon receipt of notice of assignment, such assignment of this Agreement as to such Schedule and Units by ICL or any Lease Assignee. ICL agrees that the rights of any Lease Assignee shall be subject to all of the terms and conditions of this Agreement, and that as a condition to any such assignment, such Lease Assignee shall agree to all of the terms and conditions of this Agreement.

C. Upon written notice to Lessee from any owner, security trustee or secured party under any lease or financing agreement entered into by ICL in connection with any Group of Units, all rent with respect to such Units shall be paid directly to such party and such Units shall be returned to such party upon completion or termination of this Agreement. Any assignment of this Agreement or any Schedule by ICL or any Lease Assignee to any security trustee or secured party shall not subject that security trustee or secured party to any of ICL's or such Lease Assignee's obligations hereunder.

**15. COMPLIANCE WITH REGULATIONS.** Lessee shall, at its own expense and for the benefit of ICL, comply with all governmental laws, regulations and requirements, with the Association of American Railroads ("AAR") Interchange Rules and with the rules and regulations

of the Federal Railway Administration (in each case as in effect on the date hereof) with respect to the use, maintenance, and operation of the Units. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for use of the Units and shall bear all risk of failure to obtain such permission, approval and consent, or of cancellation thereof. ICL shall take all actions reasonably requested by Lessee in order to assist Lessee in obtaining such permissions, approvals or consents. Lessee may, at its own expense and in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of ICL, adversely affect the property or rights of ICL under this Lease.

**16. RETURN OF UNITS.** Upon the expiration or earlier termination of this Agreement with respect to any Unit, Lessee will, at its own cost and expense, at the request of ICL, deliver possession of such Unit to ICL upon such tracks of Lessee as ICL may reasonably designate taking into account, among other things, Lessee's storage capacity, security and access, or, in the absence of such designation, as Lessee may select and permit ICL to store such Unit on such tracks for a period not exceeding 120 days. Lessee will move each Unit once at any time within such 120 day period from such storage location to any reasonable destination or interchange point within the continental United States on railroad lines operated by Lessee, f.o.b., all as directed by ICL upon not less than 15 days prior written notice to Lessee. Lessee shall not be obligated to move any Unit more than once at the request of ICL, after which Lessee will have no further obligation with respect to any Unit so moved and such Unit will be deleted from this Agreement. During any such storage period Lessee will permit ICL or any person designated by ICL, at their own risk, to inspect the Units; provided, however, that Lessee will not be liable, except in the case of gross negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this sentence. Lessee shall be responsible for the Units in accordance with the terms of this Agreement until such time as each Unit is delivered pursuant to ICL's disposition instructions but in no event shall such responsibility extend beyond the storage period. The Units shall be delivered free from all charges and liens except those which may result from an act or omission of ICL, in the condition specified in Section 6 hereof. If any Unit is not in the condition required hereby, Lessee shall be liable to ICL for any and all reasonable cleaning, repair or servicing costs required to place such Unit in proper condition, including the cost to transport such Unit to a repair facility. In the event that any Unit is not delivered and/or stored as hereinabove provided within 30 days of the date of the expiration of this Agreement with respect to such Unit, Lessee will pay to ICL an amount equal to the daily equivalent of the rental then in effect for such Unit for each day after the expiration date of this Agreement with respect to such Unit until such Unit is delivered and stored as instructed by ICL; provided, however, that such amount shall increase to 125% of such daily equivalent effective 90 days after the expiration of this Agreement with respect to such Unit.

**17. POSSESSION AND USE.** So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Units in accordance with the terms of this Agreement and in the manner customarily used in the railroad freight business.

**18. DEFAULT.**

A. The occurrence of any of the following events shall be an Event of Default by Lessee:

(i) The nonpayment by Lessee of any sum required herein to be paid to ICL by Lessee within ten (10) days after the due date;

(ii) Lessee shall fail to maintain the insurance required by Section 11;

(iii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days of Lessee's receipt of written notice from ICL;

(iv) Lessee becomes insolvent or fails generally to pay its debts as such debts become due, or causes or suffers an order for relief to be entered against it under applicable federal or state bankruptcy law, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for Lessee or for the major part of its property; or

(v) Any representation or warranty made by Lessee herein or in any other document delivered to ICL by Lessee related to this Agreement shall have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after Lessee's receipt of written notice from ICL of such default.

B. Upon the occurrence of any Event of Default, ICL may:

(i) Proceed by any lawful means to terminate this Agreement and recover damages for a breach hereof. ICL shall use reasonable efforts to mitigate such damages; or

(ii) Terminate Lessee's right to possession and use of the Units, whereupon all rights and interest of Lessee in the Units shall terminate and thereupon ICL may enter upon any premises where the Units may be located, take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, and ICL shall nevertheless have the right to recover from Lessee any and all rent and other amounts which are then due; or

(iii) Proceed by any lawful means to enforce performance by Lessee of this Agreement.

Lessee shall bear the costs and expenses, including without limitation reasonable attorneys' fees, incurred by ICL in connection with the exercise of its remedies pursuant to this Section 17.B. No remedy referred to in this Section 18 is intended to be exclusive but each shall be cumulative and in addition to any other remedy otherwise available to ICL at law or in equity.

## **19. RENEWAL OPTION.**

A. Provided that no Event of Default, or any event which with lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, Lessee shall have the right at expiration of the Basic Lease Term of this Agreement to renew and extend this Agreement as to all, but not less than all, of such Units for a renewal term of [sixty (60) months]. The renewal term with respect to the Units shall be subject to all the terms of this Agreement provided, however, that the rent payable by Lessee under any such renewal term shall be the Fair Market Rental provided in subsection B hereof. Lessee shall give ICL written notice not less than 120 days (but not more than 360 days) prior to the end of the Basic Lease Term of its election to exercise the renewal option provided for in this Section 19.]

B. Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would be achieved following an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 30 days from the giving of notice by Lessee of Lessee's election to extend the term of this Agreement, ICL and Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by a qualified independent appraiser. The term "Appraiser" shall mean any independent appraiser mutually agreed upon by ICL and Lessee or, if no such mutual agreement is reached within 15 days after the beginning of such appraisal period, two independent appraisers, one chosen by ICL and one chosen by Lessee, or if such appraisers cannot agree on the amount of such value within 30 days thereafter, an independent appraiser to be chosen by the American Arbitration Association promptly thereafter. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to ICL and Lessee. The determination so made shall be conclusively binding upon both ICL and Lessee, subject to Lessee's rights under subsection A hereof. The expenses and the fees of all Appraisers shall be borne by Lessee.

## **20. PURCHASE OPTION**

A. Provided that no Event of Default, or any Event which with lapse of time or the giving of notice, or both would constitute such Event of Default, shall have occurred and be continuing, Lessee shall have the right at the expiration of the term of this Agreement Basic Lease Term or any renewal thereof, to purchase all, but not less than all, of the Units for an amount equal to the Fair Market Value of the Units, as defined in subsection D hereof. If Lessee intends to exercise its right pursuant to this Section, it shall provide Lessor with written notice of same within 60 days prior to the end of the Basic Lease Term or any renewal thereof. Following such notice, ICL and Lessee agree to negotiate in good faith the Fair Market Value of the Units. If within 60 days after ICL's receipt of Lessee's notice of its election to exercise its right to purchase, ICL and Lessee are unable to agree upon the Fair Market Value of the Units, then such value shall be determined in accordance with the procedure for appraisal set forth in subsection D hereof. During a period of 30 days after the day on which the Fair Market Value is agreed upon or determined through the procedure for appraisal but not earlier than the expiration of the term of this Lease, Lessee may purchase the Units at their Fair Market Value. If Lessee does not furnish ICL with notice of its intention to exercise its rights pursuant to this Section during the 30 day period provided above or if Lessee does not purchase the Units during such 30 day period following a determination of Fair Market Value, ICL shall be under no obligation to sell any of the Units to Lessee under this Section. In the event Lessee fails to purchase the Units following a determination of Fair Market Value, Lessee shall pay any and all of ICL's reasonable out-of-pocket expenses incurred in connection with such notice by Lessee of its intention to purchase the Units.

B. In the event Lessee purchases the Units then, upon payment of the purchase price, ICL shall, upon request of Lessee execute and deliver to Lessee, or to Lessee's assignees or nominees, a bill or bills of sale (without representation or warranties except that each Unit is free and clear of all liens by or in favor of any person claiming by, through or under ICL or any assignee of ICL, other than liens resulting from claims which Lessee has assumed or agreed to pay) in form and substance satisfactory to counsel for Lessee for the Units, and such other documents as may

be required to release the Units from the terms of this Agreement and to transfer title thereto to Lessee or such assignees or nominees in such form as may be reasonably be requested by Lessee or by such assignees or nominees, all at Lessee's expense.

C. Upon, but not before, determination of the Fair Market Value of the Units, the foregoing rights to purchase the Units may be assigned in whole or in part by Lessee to any affiliate of Lessee.

D. The Fair Market Value of the Units shall be determined on the basis of, and shall be equal in amount to, the value which would be achieved following an arm's-length transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller under no compulsion to sell. If, on or before 60 days after ICL's receipt of Lessee's notice of its election to purchase pursuant to subsection A above, ICL and Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent appraiser. The term "Appraiser" shall mean any independent appraiser mutually agreed upon by ICL and Lessee or if no such mutual agreement is reached within 15 days after the beginning of such appraisal period, two independent appraisers, one chosen by ICL and one chosen by Lessee, or, if such appraisers cannot agree on the amount of such value within 60 days thereafter, an independent appraiser to be chosen by the American Arbitration Association promptly thereafter. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to ICL and Lessee. The determination so made shall be conclusively binding upon both ICL and Lessee. The expenses and fees of all Appraisers shall be borne by Lessee.

21. **GOVERNING LAW.** The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Nevada. This Agreement contains all of the terms and conditions agreed to between the parties, and no other prior agreements, oral or otherwise, concerning the subject matter of this Agreement, shall be deemed to exist or bind either party hereto. The terms of this Agreement and the rights and obligations of the parties may be changed only by a writing executed by both parties.

22. **FORCE MAJEURE.** Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including, without limitation, acts of God, riots, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

23. **RECORDING.** Lessee, at its own expense, will cause this Lease and any assignment hereof to be filed in accordance with 49 U.S.C. Section 11303. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's rights in the Units, or for the purpose of carrying out the intention of this Lease and any assignments thereof and Lessee will promptly furnish to Lessor evidence of the doing of all such acts which may be required under this Section 23, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor. This Lease shall be filed with the Interstate Commerce Commission.

24. **EXECUTION.** This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to Lessor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date of execution hereof by each of the parties hereto is the date stated in the acknowledgment hereto annexed with respect to that party's execution.

25. **FURTHER ASSURANCES; FINANCIAL INFORMATION.**

A. Lessee will, at its expense, promptly and duly execute and deliver to ICL such further documents and assurances and take such further action as ICL may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Lease and to establish and protect the rights, interests and remedies created or intended to be created in favor of ICL hereunder, including, without limitation, the execution, delivery, recordation and filing of documents with the Interstate Commerce Commission, and the execution and filing of Uniform Commercial Code financing statements in the appropriate jurisdictions. To the extent permitted by applicable law, Lessee hereby authorizes ICL to file any such financing statements without signature of Lessee.

B. Lessee will furnish to ICL not later than 120 days after the end of each fiscal year of Lessee, (i) to the extent not included in the 10K Report (as hereinafter defined), its consolidated balance sheet for such fiscal year and its consolidated statements of income and consolidated statements of cash flows for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and audited by independent public accountants selected by Lessee, and (ii) so long as Lessee is required by law to file the same, a copy of Lessee's Annual Report ("10K Report") under Section 13 or 15(d) of the Securities Exchange Act of 1934. Lessee will also furnish to ICL not later than 90 days after the end of each of the quarterly periods of each fiscal year, (i) to the extent not included in the 10Q Report (as hereinafter defined), its consolidated balance sheet as at the end of such quarterly period and a consolidated statement of its income and cash flows for such quarterly period and for the portion of its income and cash flows for such quarterly period and for the portion of its fiscal year then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles (except for the lack of footnotes and subject to year-end adjustments) applied on a basis consistently maintained throughout the period involved, and (ii) so long as Lessee is required by law to file the same, a copy of Lessee's Quarterly Report ("10Q Report") under Section 13 or 15(d) of the Securities Exchange Act of 1934.

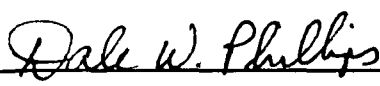
IN WITNESS WHEREOF, the parties have executed this Agreement as of the 5 day of September, 1991.

IC LEASING CORPORATION I

By: 

Title: Treasurer

ILLINOIS CENTRAL RAILROAD COMPANY

By: 

Title: VP & CFO

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK       )

On this 5 day of Sept, 1991, before me personally appeared D. Homan, to me personally known, who being duly sworn, says that such person is Treasurer of IC Leasing Corporation I and that the foregoing Railroad Locomotive Lease Agreement and Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.

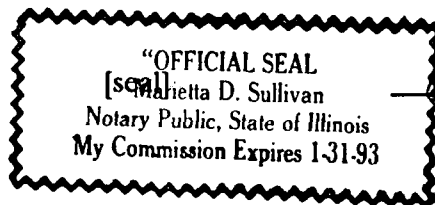


NOTARY PUBLIC  
STATE OF NEVADA  
County of Clark  
Misha J. Boyd  
My Appointment Expires Nov. 15, 1994

Misha J. Boyd  
Notary Public

STATE OF ILLINOIS       )  
                                  ) ss.  
COUNTY OF COOK       )

On this 5th day of Sept., 1991, before me personally appeared D.W. Phillips to me personally known, who being duly sworn, did depose and say that such person is VP & CFO of Illinois Central Railroad Company and that the foregoing Railroad Locomotive Lease Agreement and Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments was the free act and deed of such corporation.



Marietta D. Sullivan  
Notary Public

## SCHEDULE 1


IC Leasing Corporation I ("ICL") hereby leases the following locomotives to Illinois Central Railroad Company ("Lessee") pursuant to that certain Railroad Locomotive Lease Agreement between ICL and Lessee dated September 5, 1991 (the "Master Lease"). This Schedule is executed pursuant to the terms of the Master Lease and is hereby made a part hereof. The terms of the Master Lease, except to the extent inconsistent herewith, are incorporated herein by reference.

- (1) Number of Units: Forty-four (44)
- (2) Description: EMD SD40-2 locomotives
- (3) Unit Marks and Numbers: BN 6708-6713, BN 6715-6752 (before repair)  
IC 6100-6143 (after repair)
- (4) Delivery Points: As mutually agreed by ICL and Lessee.
- (5)
  - (a) Basic Lease Term: Period commencing December 1, 1991 and ending May 31, 1999.
  - (b) Interim Lease Term: Period commencing with the Acceptance Date as to each Unit and ending on November 30, 1991
- (6)
  - (a) Per Unit Basic Rental: Rent shall be paid at the rate of \$4,050 per month for each Unit subject to the Master Lease for the Basic Lease Term, with such rent to be payable in arrears on the first day of each quarter following such period, commencing with the installment due on March 1, 1992. ICL hereby agrees to pay for improvements made to the Units by or for the account of Lessee during the first 24 months of the Basic Lease Term in an amount not to exceed \$2,200,000 in the aggregate (representing an average of \$50,000 per Unit) and the Per Unit Basic Rental Rate set forth herein assumes that such improvements will be paid for by ICL; provided, however, that in the event Lessor fails to make such improvements, Lessee's sole remedy shall be a claim for damages equal to the amount which would have been spent to make such improvements in an action brought against Lessor for breach of this provision, and in no event shall Lessee be entitled (i) to set off any such claim against any obligation to pay rent or to make any other payment hereunder, or (ii) to any abatement of rent hereunder.
  - (b) Per Unit Interim Rental: Rent shall be paid at the rate of \$250 per day for each Unit subject to the Master Lease for the number of days elapsed (if any) during the Interim Lease Term, with such rent to be payable in arrears on the first day of the month following each month in which days occur for which such rent is due.
- (7) Casualty Value of Units: See Attachment A to this Schedule 1.

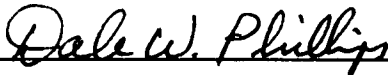


IN WITNESS WHEREOF, the parties have executed this Schedule as of the 5th day of September, 1991.

**IC LEASING CORPORATION I**

By:   
Title: Treasurer  
Date: December 10, 1991

**ILLINOIS CENTRAL RAILROAD COMPANY**

By:   
Title: VP & CFO  
Date: December 10, 1991

## ATTACHMENT A

### CASUALTY VALUE OF UNITS:

<u>DATE</u>	<u>VALUE</u>
03/01/92	\$306,420
06/01/92	305,790
09/01/92	304,440
12/01/92	302,430
03/01/93	300,090
06/01/93	297,510
09/01/93	294,480
12/01/93	291,060
03/01/94	287,220
06/01/94	283,110
09/01/94	278,580
12/01/94	273,630
03/01/95	268,290
06/01/95	262,650
09/01/95	256,680
12/01/95	250,440
03/01/96	244,110
06/01/96	237,630
09/01/96	231,060
12/01/96	224,370
03/01/97	217,530
06/01/97	210,570
09/01/97	203,490
12/01/97	196,290
03/01/98	188,940
06/01/98	181,440
09/01/98	173,820
12/01/98	166,050

<u>DATE</u>	<u>VALUE</u>
03/01/99	158,100
06/01/99	150,000